No. 979

In the Supreme Court of the United States

OCTOBER TERM, 1944

DEFENSE PLANT CORPORATION, APPELLANT

v.

COUNTY OF BEAVER, PENNSYLVANIA

REPLY TO MOTION TO DISMISS OR AFFIRM

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 979

DEFENSE PLANT CORPORATION, APPELLANT

v.

COUNTY OF BEAVER, PENNSYLVANIA

REPLY TO MOTION TO DISMISS OR AFFIRM

This reply is directed to the position of the appellee in its motion to dismiss or affirm that the Federal question raised in the jurisdictional statement is not substantial. This reply is therefore germane whether the appeal papers are treated as an appeal or, under Section 237 (c) of the Judicial Code, as a petition for certiorari.

The Pennsylvania taxing statute, as applied to the machinery here involved, is in conflict, it is submitted, with the provisions of the Federal statute which reaffirm the constitutional immunity of the appellant from local taxation save only with respect to its "real property." Act of June 10, 1941, sec. 3, 55 Stat. 248, 15 U. S. C. sec. 610. The Federal Act specifically provides

that "Such exemptions shall also be construed to be applicable to the loans made, and *personal property* owned, by the Reconstruction Finance Corporation or by any corporation referred to in clause (1) [including Defense Plant Corporation] * * *." *Ibid.* (Italics added.)

In its treatment of the problem the court below failed to give to the provision concerning real property the limited construction appropriate to the waiver of tax immunity. This Court has had occasion to observe that with this limited qualification the tax immunity provision of the Reconstruction Finance Corporation Act "was intended to give as wide immunity as possible to the functions and activities of the corporation." *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 101, note 7, quoting House and Senate Committee Reports.[1] The court below likewise failed to consider the significance of the statutory provision in the same section that the exemptions "shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes."

[1] The Reports state: "Section 10 has generally been understood to assert the broadest possible constitutional immunity from the burden of taxation for the Corporation, its assets and its operations. This construction follows from the language of the section which confers tax exemption upon 'the Corporation,' while specifically consenting to the taxation of real property alone." S. Rep. 1545, 74th Cong., 2d sess., p. 1; H. Rep. 1995, 74th Cong., 2d sess., p. 1.

This indicates a caution that in construing the Federal law the classification of property as real or personal is not to depend upon particular state laws. It likewise indicates that the clause providing that taxation of appellant's real property shall be non-discriminatory does not control the definition of such property but only the amount of taxation once the property is identified.

It is our position that the concept of real property as employed by Congress is to be understood in a uniform sense, in the light of the familiar and common acceptance of the term, and is not to be derived from latitudinarian categories which may be adopted by the states for a variety of purposes. In this view, the decision below is erroneous, for the findings of the trial court disclose that the property in question consists of machinery either not attached to the building or so attached that it is readily removable without injury, and indeed that such machinery has frequently been transferred to and from the premises. To hold that such property is real property within the meaning of the exclusion provision would open the door to multiple state taxation of movable property owned by the appellant and would defeat the intention of Congress that personal property is to retain its tax-immune status.

The question is an important one. The provision here involved is substantially similar to those relating to many other Federal agencies. See the Government's brief in *Federal Public*

Housing Authority v. *Guckenberger*, No. 388, present Term, p. 24. The plants and projects constructed and owned by appellant alone are located in forty-six states, represent a total cost to appellant of approximately $8,000,000,000, of which amount approximately $5,000,000,000 represents cost of machinery and equipment. The same question here presented is now pending before various lower courts in the States of California, Louisiana and Texas, as well as in Pennsylvania, and has been raised administratively by the taxing authorities in several other states. It is submitted that a question of such scope should be definitely settled by this Court's construction of the Act of Congress so that a multiplicity of litigation may be avoided, a uniform interpretation of the law obtained and an orderly administrative practice established by appellant with respect to local taxation of its real property and the proper expenditure of public funds.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

HANS A. KLAGSBRUNN,
General Counsel,
STERLING NEWELL,
HENRY J. CRAWFORD,
WILLIAM N. GATES,
HAROLD F. REED,
Counsel for Defense Plant Corporation.

MARCH 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945